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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/607,313 | 06/28/2000 | Brad Baker | 30687-US | 6871 |
| 5179 | 7590 | 09/07/2005 | EXAMINER | |
| PEACOCK MYERS, P.C. P O BOX 26927 ALBUQUERQUE, NM 87125-6927 | | | TRAN LIEN, THUY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

HC

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Office Action Summary

Application No.

09/607,313

Applicant(s)

BAKER, BRAD

Examiner

Lien T. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The indicated allowability of claim 31 is withdrawn in view of the newly discovered reference(s) to Chan. Rejections based on the newly cited reference(s) follow.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on "Paint Pop" product in view of Nichels and Chan.

The brochure discloses Paint Pop which comprises candy in the shape of a paint roller, a packet comprising candy powder and a paint tray. The candy powder is emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

The brochure does not disclose the shape of a paint brush/paint can and the handle portion being edible.

Nichels disclose a paint can having a paint brush holder attached to the paint can through a member. The paint brush holder is the cup (16) which holds a paint brush therein. The cup 16 is received in member (10) and the member 10 is affixed to a paint can through post (32). (see columns 3-4)

Chan discloses a lollipop comprising a ball of hard candy and an edible stick inserted into a cavity of the ball of candy. The stick comprises pressed candy. (see col. 1 lines 28-35)

The claimed product differs from the prior art product in the shape. Applicant is moving from one conventional design shape to another conventional design shape. A paint tray, a paint can, a paint brush and a paint roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been

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obvious to one skilled in the art because such shapes are all well known in the art.

Nickel shows a paint can and paint brush combination. It would have been obvious to one skilled in the art to make a paint can/paint brush candy combination because such shape is conventional in the painting product as shown by Nickels. As to the inclusion of a lid, it would have been obvious for one to include a lid when the product is made in the shape of paint can to prevent the content inside the container from falling out. While the Nickel product does not show a lid, it is obvious to include a lid in such paint can because it is notoriously well known in the art to include a lid on paint can to prevent the product from falling out. One can readily see this on any paint can in the paint store. It would have been obvious to make the handle to also be edible, as taught by Chan, in the lollipop to reduce wastage of the stick to give more candy to the product. As to having a holder for holding a paint brush which is connected through a member attached to the container, such configuration is shown by Nickels. When an adaptation of an inedible product to an edible is made, it would have been obvious to incorporate all features of the inedible product to obtain a parallel function. The inclusion of a brush holder is advantageous in that the painter can rest the brush without worrying about dripping of the paint on other places or contamination of the paint brush with other material. Such advantage also applies to a candy product having the same configuration.

Applicant's arguments with respect to claim 31 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 6, 2005


LIEN TRAN
PRIMARY EXAMINER
